EMPLOYEES WITHIN THE MEANING OF THE FEDERAL EMPLOYERS' LIABILITY ACT.—The original Employers' Liability Act of 1906[1] attempted to regulate the liability of railroads engaged in interstate commerce to all of their employees. In the First Employers' Liability Cases[2] this act was declared to be unconstitutional on the ground that Congress had power to regulate the liability of interstate railroads only to such employees as were engaged in interstate commerce. The Act of 1908[3] was passed to remedy this defect. This act provides that "Every common carrier by railroad, while engaging in commerce between any of the several states or territories * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." The constitutionality of this act was upheld in the Second Employers' Liability Cases.[4]

When is an employee engaged in interstate commerce within the meaning of the act? On this point hinges much of the litigation arising under the statute. The cases have established no hard and fast dividing line. An agent whose duties consisted merely in soliciting passenger traffic for an interstate carrier, was held engaged in interstate commerce.[5] This holding is justified on the ground that the agent's business was directly connected with interstate commerce; through him as an initial instrument the company was brought into relations with interstate passengers. A fireman on the way from his home to a point where he had been directed to proceed and assume his duties on an interstate train, was negligently injured by another train of the company. It was held that he was engaged in interstate commerce—the court holding that the moment the plaintiff acted on the order of the company he had become an interstate employee within the meaning of the act.[6] An employee injured while unloading rails transported from another state and having reached their destination, was held not to be employed in interstate commerce.[7] It is difficult to reconcile this decision with the weight of authority. It would seem that unloading the rails was the final step in their interstate transportation, and an essential and inseparable element of such transportation. A workman injured while repairing a bridge used in both intrastate and interstate traffic has been held not to be employed in interstate commerce.[8] Employees injured while repairing a car used indis-

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[1] Act of June 11, 1906. (34 Stat. 232.)
[2] Howard *v.* Ill. Central Ry. Co., 207 U. S. 463.
[3] Act of April 22, 1908. (35 Stat. at L. 65, chap. 149, U. S. Comp. Stat. Supp. 1911, p. 1322.) The act and the amendment of April 5, 1910 (36 Stat. at L. 291, chap. 143, U. S. Comp. Stat. Supp. 1911, p. 1324) are printed in full in 223 U. S. 6, 56 L. Ed. 329, 38 L. R. A. (N. S.) 44, 32 Sup. Ct. 169.
[4] Mondou *v.* N. Y., N. H. & H. Ry. Co., 223 U. S. 1.
[5] McCall *v.* California, 136 U. S. 104.
[6] Lamphere *v.* Oregon, etc., Ry. Co., 196 Fed. 336.
[7] Pierson *v.* N. Y. S. & W. Ry. Co. (N. J.), 85 Atl. 233.
[8] Taylor *v.* Southern Ry., 178 Fed. 380.

criminately in both interstate and intrastate commerce;[9] or repairing an engine used in interstate commerce;[10] or repairing a track,[11] or a switch,[12] have all been held to come within the purview of the statute.

A recent decision of the United States Supreme Court goes further still in extending the scope of interstate employment. A workman injured while carrying a bag of bolts for the repair of a bridge used by the defendant company in both interstate and intrastate traffic, was held, by a divided court, to be employed in interstate commerce within the meaning of the act. *Pederson* v. *Delaware, Lockawanna, & Western Ry. Co.*, 33 Sup. Ct. 648. The court declared that the work of keeping such instrumentalities in a proper state of repair was so closely related to commerce as to be a part of it. The view of the majority in this case would seem to extend the statute beyond the limits of a reasonable construction. The bridge was only a potential agency of transportation, and the plaintiff's work could at most have only a remote and consequential effect on such transportation. The bridge may have needed repairs, but *non constat* that such repairs were essential to the continued use of the bridge. In such case the work might have been indefinitely postponed without in any way affecting commerce. It might as well be said that the man who made the bolts was also engaged in commerce. The sole business of common carriers, such as railroads, is transportation. The work of each employee has for its purpose the furtherance of transportation, but each employee does not occupy the same relation in respect to it. The work of some affects it directly and immediately, while that of others affects it only remotely and consequentially. Only those employees whose work has a direct and immediate effect on the actual movement of interstate traffic, should be held employed in interstate commerce within the meaning of the act. As was said by the same court in an earlier case:[13] "If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise * * * that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many matters purely domestic in their nature."

The recent cases, however, plainly show that the present tendency of the courts is to extend to the utmost limit the sphere of governmental control.

INDEBTEDNESS OF MUNICIPAL CORPORATIONS UNDER CONSTITUTIONAL AND STATUTORY LIMITATIONS.—Constitutional and statutory provisions, arbitrarily restricting the power of municipal corpora-

[9] Northern Pac. Ry. Co. *v.* Maerkl, 198 Fed. 1.
[10] Darr *v.* B. & O. Ry. Co., 197 Fed. 665.
[11] Zikos *v.* Oregon, etc., Ry. Co., 179 Fed. 893.
[12] Central Ry. Co. of N. J. *v.* Calsurdo, 192 Fed. 901.
[13] Hooper *v.* California, 155 U. S. 648.